

August 15, 2019

To: Members of the California Assembly Appropriations Committee

From: Conscience Coalition

Re: OPPOSITION to Senate Bill 276

Conscience Coalition opposes Senate Bill (SB) 276. We urge all committee members to vote NO on SB 276.

Conscience Coalition is a nonpartisan organization that is helping to educate the public and their lawmakers about the dangers of SB 276.

We OPPOSE this bill because it disregards the reality of vaccine-inflicted injuries and deaths—which occur on a daily basis; and because it will disrupt the doctor-patient relationship, force doctors to violate the Hippocratic Oath, rob parents of informed consent, and add to the vaccine-inflicted injury and death toll.

To educate the public and their lawmakers about this, we assembled a study package that focuses on **the federal law of the land that codified the inevitability of vaccine injury and death**. The package includes:

1. The National Childhood Vaccine Injury Act of 1986 (NCVIA): the federal law that gave vaccine makers immunity from liability for damages arising from vaccine-related injuries and deaths that result from “unavoidable” side effects; and created a compensation program for the vaccine victims. California Rep. Henry Waxman sponsored this Act because drug companies threatened to stop making vaccines if they had to continue to face the massive increase in lawsuits from the parents of tens of thousands of victims they were creating.
2. The legislative report that accompanied the NCVIA: the report that explains congressional intent.
3. The 2011 Supreme Court ruling on *Bruesewitz v. Wyeth*: the decision that held that the NCVIA preempts/prevents all design-defect claims against vaccine makers brought by the victims of vaccine injuries and deaths; suggests that a vaccine’s design is not open to question; and establishes the “unavoidability” of vaccine injuries and deaths as a “complete defense.”
4. The 2011 Dissent by Supreme Court Justices Sonia Sotomayor and Ruth Bader-Ginsburg: the opinion that the legislative report confirms that “unavoidable” side

effects are created by vaccines that “in the present state of human skill and knowledge cannot be made safe.”

The NCVIA provides:

“No vaccine manufacturer shall be liable in a civil action for damages arising from a vaccine-related injury or death associated with the administration of a vaccine after October 1, 1988, if the injury or death resulted from side effects that were unavoidable even though the vaccine was properly prepared and was accompanied by proper directions and warnings.” §300aa-22(b)(1)

According to the 2011 opinion of the U.S. Supreme Court in *Bruesewitz v. Wyeth*, the NCVIA had two purposes: 1) to stabilize the vaccine market (which was reeling due to a “massive increase in vaccine-related tort litigation”); and, 2) to facilitate compensation for victims of the vaccines themselves.

It is important to understand that while proponents of SB 276 repeat the “safe and effective” dogma, federal law recognizes vaccine-inflicted injuries and deaths as a given. The NCVIA created a vaccine injury compensation program and, according to the opinion of the U.S. Supreme Court, fast adjudication of claims “is made possible by the Act's Vaccine Injury Table, which lists the vaccines covered under the Act; describes each vaccine's compensable, adverse side effects; and indicates how soon after vaccination those side effects should first manifest themselves.”

Further, the opinion goes on to state, “Successful claimants receive compensation for medical, rehabilitation, counseling, special education, and vocational training expenses; diminished earning capacity; pain and suffering; and \$250,000 for vaccine-related deaths.”

Please pause and think about this when considering that SB 276 will effectively eliminate all remaining exemptions to mandatory vaccines. This will have tragic consequences for a certain percentage of California children.

Congress failed to prioritize vaccine safety and the prevention of vaccine-inflicted injuries and deaths in the first place. In fact, vaccine safety was *not* even mentioned as a purpose of the NCVIA by the 2011 opinion of the U.S. Supreme Court in *Bruesewitz v. Wyeth*.

“Further evidence comes from FDA’s regulations—more than 90 of them—that pervasively regulate the manufacturing process,” the opinion continued, “down to the requirements for plumbing and ventilation systems at each manufacturing facility. Material noncompliance with any one of them, or with any other FDA regulation, could cost the manufacturer its regulatory-compliance defense. Design defects, in contrast, do not merit a single mention in the NCVIA or the FDA’s regulations. Indeed, the FDA has

never even spelled out in regulations the criteria it uses to decide whether a vaccine is safe and effective for its intended use.” Further, the NCVIA, “which in every other respect micromanages manufacturers, is silent on how to evaluate competing designs.”

This is unbelievable when you stop and think about this. But it would explain why Congress has allowed the U.S. Department of Health and Human Services (HHS) to utterly ignore the vaccine safety provisions that were included in the NCVIA.

HHS has failed to lift a finger to uphold its vaccine safety duties under the law. In fact, HHS has failed to even provide a single vaccine safety report to Congress over the thirty years since the NCVIA was signed into law.

[The revelation of HHS breaching federal law](#) came after eight long months of abject stonewalling against a Freedom of Information Act (FOIA) request from the nonpartisan nonprofit Informed Consent Action Network (ICAN) and its founder Del Bigtree. ICAN sought copies of the reports HHS was required to submit to Congress every two years, starting in 1988, detailing improvements it has made to vaccine safety.

This is troublesome when you consider the 2011 Dissent by Supreme Court Justices Sotomayor and Bader Ginsberg, which said, “side effects that were unavoidable’ must refer to side effects caused by a vaccine’s *design* that were ‘unavoidable.’” And the majority opinion agrees with this.

From there, Justices Sotomayor and Bader Ginsberg believe that House Report 99-908, the legislative report that accompanied the NCVIA and explained the congressional intent of the law, “confirms that whether a side effect is ‘unavoidable’... involves a specific inquiry in each case as to whether the vaccine ‘in the present state of human skill and knowledge cannot be made safe.’”

It is important for every lawmaker to understand the implications of this. It means **“unavoidable” side effects are caused by vaccines that cannot be made safe in the present state of human skill and knowledge.**

This legal principle comes from Comment K of §402A of the Restatement of Torts (Second) (1963-1964). According to the legislative report that accompanied the NCVIA, Congress “set forth Comment K in this bill because it intends that the principle in Comment K regarding ‘unavoidably unsafe’ products, i.e., those products which in the present state of human skill and knowledge cannot be made safe, apply to the vaccines covered in the bill and that such products should not be the subject of liability in the tort system.”

Proponents of SB 276 are saying the federal law of the land has nothing to do with this bill; that vaccines are “safe and effective” and you should not think twice about voting

yes on a bill that will effectively eliminate all remaining exemptions from the mandatory regime.

Here is how the federal law of the land on vaccine-inflicted injuries and deaths has everything to do with SB 276:

- **Since the NCVIA was implemented, more than \$4.1 billion has been paid out in compensation to victims of vaccines that “cannot be made safe in the present state of human skill and knowledge.”**
- **Again, that’s just the tip of the iceberg. A 2011 Harvard Pilgrim Health study commissioned by the CDC revealed less than 1 percent of adverse events from such vaccines are reported.**
- **If SB 276 passes and is signed into law, medical exemptions from mandatory vaccines will be effectively eliminated.**
- **California will see an increase in the number of injuries and deaths caused by these vaccines that cannot be made safe.**

The numbers do not lie.

In California alone, since the passage of the NCVIA—and remember this is according to the government’s own data—there were 354 reports of vaccine-inflicted deaths, 822 reports of vaccine-inflicted life threatening emergencies and 934 reports of vaccine-inflicted permanent disabilities.

We know this is NOT the outcome you want to produce as part of your legacy.

We respectfully urge you to vote NO on SB 276.

You can read and download the full study package on SB 276 at ConscienceCoalition.com/study.

Thank you for your time and consideration.



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